

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Electronic Corporate Pages, Inc.) File No. EB-09-HU-0060
)
Owner of Antenna Structure) NAL/Acct. No. 201032540001
ASR # 1048971)
Florence, Texas) FRN 0014645576
)

FORFEITURE ORDER

Adopted: January 15, 2010

Released: January 20, 2010

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Electronic Corporate Pages, Inc. (“ECPI”), owner of antenna structure number 1048971, in Florence, Texas for willful and repeated violation of Sections 17.51(b) and 17.57 of the Commission's Rules (“*Rules*”).¹ The noted violations involve ECPI's failure to exhibit all medium intensity obstruction lighting as specified and failure to notify immediately the Commission upon change in ownership information.

II. BACKGROUND

2. On August 11, 2009, the Commission's Houston Office of the Enforcement Bureau (“Houston Office”) received a complaint stating that antenna structure number 1048971 was unlit and the owner listed in the registration could not be reached.² On that date, an agent from the Houston Office consulted the Commission's Antenna Structure Registration (“ASR”) database and noted that Clifford Langford was listed as the owner of antenna structure number 1048971.

3. On September 2, 2009, agents from the Houston Office inspected antenna structure number 1048971. According to the registration for ASR number 1048971, the antenna structure is to display medium intensity obstruction lighting during both daytime and nighttime operation. During the daytime, the agents observed that the structure's medium intensity obstruction lights were not operational. The agents asked a person conducting work on the tower the name of the current tower owner. The worker stated that antenna structure number 1048971 was owned by ECPI. Agents contacted the owner of ECPI, who stated he purchased the antenna structure in January 2009 and had not updated the registration to reflect the new ownership. The owner, who was unaware of the outage, also stated the obstruction lighting for antenna structure number 1048971 was not currently being monitored by daily visual observations or by an automatic alarm system. Later that day, after inspecting the tower, the owner informed the agent that the electricity to the structure had been turned off. The owner added that the power had been restored and that

¹ 47 C.F.R. §§ 17.51(b), 17.57.

² In response to a complaint they received about the tower, the Federal Aviation Administration (“FAA”) issued a Notice to Airmen regarding antenna structure number 1048971.

the lights were now functioning properly.

4. On September 4, 2009, ECPI's owner informed an agent from the Houston Office that the individual who was visually monitoring the obstruction lighting recently moved away. The owner did not know when the individual moved away and admitted that no other person had been hired to resume the daily observations.

5. On September 8, 2009, ECPI's owner informed an agent from the Houston office that a person had been hired to monitor visually the lights on antenna structure number 1048971 on a daily basis until an automatic monitoring system is functional.

6. On October 8, 2009, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to ECPI in the amount of thirteen thousand dollars (\$13,000), for the apparent willful and repeated violation of Sections 17.51(b) and 17.57 of the Rules.³ ECPI submitted a response to the *NAL* requesting reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining ECPI's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

8. Section 17.51(b) of the Rules requires that all medium intensity obstruction lighting be exhibited as specified. Section 17.47 of the Rules requires owners of antenna structures to observe structure lights visually once every 24 hours to ensure that all lights are functioning properly as required or employ an automatic alarm system designed to detect any failure in the lights.⁷ Antenna structure number 1048971 is required to display medium intensity obstruction lighting during both daytime and nighttime operation. On September 2, 2009, agents from the Houston Office observed that the medium intensity obstruction lighting on antenna structure number 1048971 was not functioning. ECPI's owner admitted that ECPI was not monitoring the antenna structure lights once daily and did not have a functioning automatic alarm system. Accordingly, ECPI was unaware of the lighting outage prior to the inspection.⁸ ECPI also discovered that the electricity to the antenna structure had been disconnected for an undisclosed period of time. ECPI was aware that the lights on its antenna structure were not being monitored for multiple days.

9. In response to the *NAL*, ECPI states that it corrected the lighting outage within three hours of the agent's notification. ECPI states that the outage was caused by an older fuse box being improperly closed by a maintenance worker, which resulted in the power to the light being accidentally shut off. ECPI also claims that there is no evidence to prove that the outage was anything other than short, because the

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 201032540001 (Enf. Bur., Houston Office, October 8, 2009) ("*NAL*").

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ 47 C.F.R. § 17.47.

⁸ ECPI did not notify the FAA of the lighting outage. See 47 C.F.R. § 17.48 (requiring immediate notification to the FAA of any top steady or flashing obstruction lighting outage not repairable within 30 minutes).

agent only observed the outage on one occasion.

10. It is undisputed that ECPI failed to observe visually or monitor via an automatic alarm system the lights on antenna structure number 1048971 for more than one day prior to September 2, 2009 in violation of Section 17.47 of the Rules. It is also undisputed that ECPI was unaware of the lighting outage prior to the agent notification on September 2, 2009 and did not notify the FAA of the outage. Finally, it is undisputed that no lights on antenna structure number 1048971 were displayed on September 2, 2009, until approximately 1:30 P.M., three hours after the agent notification of the outage. Therefore, ECPI's failure to monitor the lights resulted in its failure to detect the lighting outage. Thus, based on the evidence before us, we find that we find that ECPI willfully⁹ violated Section 17.51(b) of the Rules by failing to exhibit all medium intensity obstruction lighting as specified on September 2, 2009. Based on ECPI's statement that the power to the antenna structure was accidentally turned off, we agree that we do not have sufficient evidence to find that the outage lasted for more than a few hours. Therefore, we reduce the forfeiture for this violation to \$2,000.¹⁰

11. Section 17.57 of the Rules requires that the owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must immediately notify the Commission upon any change in ownership information. ECPI purchased antenna structure number 1048971 in January 2009. As of September 2, 2009, the previous owner was still listed on the antenna structure registration as the current owner. On September 2, 2009, ECPI's owner admitted that he had not updated the structure's ownership information. Thus, based on the evidence before us, we find that ECPI willfully and repeatedly¹¹ violated Section 17.57 of the Rules by failing to immediately notify the Commission upon change in ownership information in the antenna structure.

12. In response to the *NAL*, ECPI does not deny that it failed to update the structure's ownership information for over nine months. ECPI states that Mr. Langford, who was listed as the owner as of August 11, 2009, sold the antenna structure to another individual, who sold it to ECPI. The individual who sold the tower to ECPI told ECPI's owner that he could not register the antenna structure until the intermediary transaction was reflected in the ASR database. ECPI states its owner did not discover that this information was false until after he was contacted by the agent. However, ECPI did not attempt to update the ownership information, and, instead chose to rely on the statements of a third party, to its detriment. Thus, we find no reason to reduce or cancel this forfeiture.

13. ECPI also requests a reduction of the forfeiture, because it cooperated with the Commission's agents and has a history of compliance with the rules. Cooperation with Commission agents is expected, and corrective action taken after an inspection or notification does not nullify or mitigate any prior forfeitures or violations.¹² However, we have reviewed ECPI's record and agree that it

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ ECPI willfully and repeatedly failed to observe visually or monitor via an alarm monitoring system the lights on its antenna structure in violation of Section 17.47 of the Rules. The base forfeiture amount for failing to conduct required monitoring is \$2,000, so we conclude \$2,000 is an appropriate amount for ECPI's violation. See 47 C.F.R. § 1.80.

¹¹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹² See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994), *Rama Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 4981 (Enf. Bur. 2009), *Bethune-Cookman College, Inc.*, Forfeiture Order, 24 FCC Rcd 4513 (South Central Region 2009).

has not received any previous written violations. Accordingly, we reduce the total forfeiture to \$4,000 based on its history of compliance with the rules.

14. Finally, ECPI states that the \$13,000 forfeiture would reduce its limited operating capital and hinder its ability to purchase an automatic monitoring system. With regard to an individual's or entity's inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹³ ECPI failed to provide any documentation of its gross revenues, so we are unable to determine whether a reduction based on its inability to pay the forfeiture is warranted.

15. We have examined ECPI's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we reduce the forfeiture associated with the tower lighting violation to \$2,000 and reduce the total forfeiture to \$4,000 based on ECPI's history of compliance with the rules.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Electronic Corporate Pages, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Sections 17.51 and 17.57 of the Rules.¹⁴

17. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. ECPI will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

¹³ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.51, 17.57.

¹⁵ 47 U.S.C. § 504(a).

18. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Electronic Corporate Pages, Inc. at its address of record and to its counsel, Kristopher E. Twomey, 1725 I Street, NW, Suite 300, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau